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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

DANIEL SHIRLEY.

Plaintiff,

VS.

BMW OF NORTH AMERICA, LLC,
a foreign limited liability company,
BMW FINANCIAL SERVICES NA,
LLC, a foreign limited liability
company, BMW OF SPOKANE, a
foreign limited liability company,

Defendants.

Case No.

**DEFENDANTS' NOTICE OF
REMOVAL OF ACTION TO
FEDERAL COURT**

Removed from Spokane County Superior Court (Case No. 23-2-04218-32)

[28 U.S.C. §§ 1332(a), 1441, and 1446]

**DEFENDANTS' NOTICE OF REMOVAL
OF ACTION TO FEDERAL COURT - 1**

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1 **TO: THE CLERK OF COURT FOR THE UNITED STATES**
2 **DISTRICT COURT FOR THE EASTERN DISTRICT OF**
3 **WASHINGTON**

4 **AND TO: PLAINTIFF AND ITS ATTORNEYS OF RECORD**
5 **AND TO: DEFENDANT BMW OF SPOKANE**

6 PLEASE TAKE NOTICE THAT, Defendants BMW of North America,
7 LLC, and BMW Financial Services NA, LLC (collectively "Defendants"), by and
8 through counsel, remove the above-entitled action to this Court from the Superior
9 Court of the State of Washington in and for Spokane County, pursuant to 28
10 U.S.C. §§ 1332, 1441, and 1446 because diversity exists and the amount in
11 controversy exceeds \$75,000. Defendants deny the allegations and relief sought,
12 and file this Notice without waiving any defenses, exceptions, or obligation that
13 may exist in its favor. Defendants will provide additional evidence to support the
14 allegations of this pleading as required in the event a challenge is raised to the
15 Court's jurisdiction.

16 This removal is based on the following grounds:

17 **I. PROCEDURAL BACKGROUND**

18 1. On October 9, 2023, Plaintiff filed his complaint against Defendants
19 in Spokane County Superior Court, entitled *Shirley, Daniel F v. BMW of North*

1 *America LLC et al.*, Spokane County Superior Court Case No. 23-2-04218-32. A
2 copy of Plaintiff's Summons and Complaint is attached hereto as **Exhibit A**.

3 2. On November 3, 2023, Plaintiff and Defendants filed a stipulated
4 acceptance of service after Plaintiff mailed a copy of the complaint to Defendants'
5 registered agents but did not personally serve Defendants. A copy of the stipulated
6 acceptance of service is attached hereto as **Exhibit B**.

7 **II. REMOVAL IS TIMELY**

8 3. Defendants filed a stipulated acceptance of service on November 3,
9 2023. Thirty days from the acceptance of service falls on Sunday, December 3,
10 2023. This Notice of Removal is therefore due by Monday, December 4, 2023.
11 Fed. R. Civ. P. 6(a)(1)(C). Because this Notice is filed within thirty days from
12 service, it is timely under 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti*
13 *Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999).

14 **III. THE COURT HAS DIVERSITY JURISDICTION UNDER 28 U.S.C.**
15 **§ 1332**

16 4. This Court has subject matter jurisdiction because (1) there is
17 complete diversity of citizenship between Plaintiff and all Defendants; (2) the
18 amount in controversy exceeds \$75,000 exclusive of interest and costs; and (3) all
19 other requirements for removal are satisfied.

1 **A. Diversity of Citizenship Exists.**

2 5. “A case is removable on diversity grounds if diversity of citizenship
 3 can be ascertained from the face of plaintiff’s complaint.” *Diener as Tr. of Michael*
 4 *A. Diener Tr., dated 12 June 2017 v. Super Structures FL, LLC*, 2023 WL
 5 3645504, at *1 (E.D. Cal. May 25, 2023). There is complete diversity of
 6 citizenship in this case because the face of the complaint shows that Plaintiff is a
 7 citizen of Massachusetts and that Defendants are all citizens of states other than
 8 Massachusetts.

9 **i. Plaintiff is a Citizen of Massachusetts.**

10 6. “An individual is a citizen of the state in which he is domiciled.” *Boon*
 11 *v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002) (citing *Kanter v.*
 12 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). For purposes of diversity
 13 jurisdiction, citizenship is determined by the individual’s domicile at the time that
 14 the lawsuit is filed. *Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546
 15 (9th Cir. 2000). Domicile is determined by “an individual’s 1) residence in a state,
 16 and 2) his intent to remain indefinitely.” *Boon*, 229 F. Supp. 2d at 1019. Evidence
 17 of continuing residence creates a presumption of domicile. *Washington v. Hovensa*
 18 *LLC*, 652 F.3d 340, 395 (3d Cir. 2011); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19
 19 F.3d 514, 519 (10th Cir. 1994).

1 7. In the complaint, Mr. Shirley alleges he “is an individual residing in
 2 Boston, Suffolk County, Massachusetts.” Compl. ¶ 1.1. Mr. Shirley’s continued
 3 residence in Massachusetts creates the presumption that he is domiciled in
 4 Massachusetts and is a citizen of the State of Massachusetts for purposes of
 5 removal. *See Hovensa LLC*, 652 F. 3d at 395; *State Farm Mut. Auto. Ins. Co.*, 19
 6 F.3d at 519.

7 **ii. Defendants are Citizens of Delaware and New Jersey.**

8 8. For purposes of analyzing diversity jurisdiction, “an LLC is a citizen
 9 of every state of which its owners/members are citizens.” *Johnson v. Columbia*
 10 *Properties Anchorage, LP*, 437 F.3d 894 (9th Cir. 2006). A corporation is a citizen
 11 of the state in which it is incorporated and the state where its principal place of
 12 business is located. *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010) (holding
 13 that “‘principal place of business’ is best read as referring to the place where a
 14 corporation’s officers direct, control, and coordinate the corporation’s activities”).

15 9. Defendant BMW Financial Services, LLC is a Delaware limited
 16 liability company, and its sole member is BMW of North America, LLC.
 17 Defendant BMW of North America, LLC is a Delaware limited liability company
 18 whose sole member is BMW U.S. Holding Corp., a Delaware corporation with its

1 principal place of business in New Jersey. Accordingly, Defendants are citizens of
 2 Delaware and New Jersey.

3 10. The complaint alleges that a third defendant, BMW of Spokane,
 4 conducts business in Washington.

5 **3. Complete Diversity of Citizenship Exists.**

6 11. Plaintiff is a citizen of Massachusetts, and Defendants are citizens of
 7 Delaware, New Jersey, and Washington. No plaintiff is domiciled in the same state
 8 as any defendant, and thus there is complete diversity of citizenship. *Accord Cady*
 9 *v. Am. Fam. Ins. Co.*, 771 F. Supp. 2d 1129, 1130 (D. Ariz. 2011) (“§ 1332
 10 requires complete diversity—no plaintiff may be a citizen of the same state as any
 11 defendant.”).

12 **B. The Amount in Controversy Exceeds \$75,000.**

13 12. To establish diversity jurisdiction, the amount in controversy must
 14 exceed the sum or value of \$75,000. 28 U.S.C. §1332(a). A removing defendant’s
 15 notice of removal must contain only “a short and plain statement of the grounds for
 16 removal.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83
 17 (2014). The “defendant’s notice of removal need include only a plausible
 18 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Id.*
 19 at 89. “[D]efendants do not need to prove to a legal certainty that the amount in

1 controversy requirement has been met. Rather, defendants may simply allege or
 2 assert that the jurisdictional threshold has been met.” *Id.* at 89–90 (internal
 3 quotation omitted). When estimating attorneys’ fees for purposes of removal, the
 4 estimated amount is not limited to the fees incurred as of the time of removal, but
 5 include those future attorneys’ fees that would reasonably accrue through the time
 6 the action is resolved. *Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785,
 7 794 (9th Cir. 2018).

8 13. The face of Plaintiff’s complaint shows that Plaintiff seeks to receive
 9 at least \$10,000 in damages, plus treble damages and attorneys’ fees. Compl. § IX,
 10 ¶¶ 2–4. In addition, Plaintiff’s complaint places at least \$42,000—the total alleged
 11 listed price of two vehicles at issue in the Complaint—into controversy by
 12 asserting that Plaintiff is entitled to the “amounts paid by the buyers of the
 13 vehicles.” *Id.* ¶¶ 3.9–3.10. Further, the complaint places an unknown and likely
 14 significant amount into controversy alleging that Defendants’ conduct caused him
 15 not to purchase real property. *Id.* ¶ 4.09.

16 14. Finally, it is reasonable and indeed conservative to estimate that at
 17 least \$50,000 in attorneys’ fees can be anticipated through the resolution of this
 18 case. *Fritsch*, 899 F.3d at 794; see, e.g., *Slater v. Top Notch Motors*, 10 Wash. Arb.
 19 Rpts. 206, 2010 WL 3720805 (Wash. Super.) (Verdict and Settlement Summary)

1 (summarizing plaintiff arbitration award in action alleging violation of Washington
 2 anti-bushing law and a per se violation of the Washington Consumer Protection
 3 Act that included an award of \$17,735 in damages and attorneys' fees in the
 4 amount of \$56,186).

5 15. In *Banuelos v. TSA Wash., Inc.*, 134 Wn. App. 607, 608 (2006), the
 6 Court of Appeals affirmed a judgment entered in Yakima County Superior Court in
 7 favor of a single plaintiff against a car seller for anti-bushing and CPA violations.
 8 The award included \$90,125 in attorney's fees. *Id.*

9 16. While Defendants deny Plaintiff's factual allegations and further deny
 10 that Plaintiff is entitled to any relief whatsoever, Plaintiff's allegations have put
 11 into controversy an amount "more likely than not" in excess of \$75,000, exclusive
 12 of interest and costs.

13 **C. All Other Requirements for Removal are Satisfied.**

14 17. *Removal is Timely.* This removal is timely. See ¶ 4, *supra*.

15 18. *All Defendants Consent to Removal.* Below counsel are attorneys of
 16 record for BMW of North America, LLC and BMW Financial Services, LLC.
 17 Separate counsel represents defendant BMW of Spokane. BMW of Spokane has
 18 represented that it does not object to removal. Accordingly, pursuant to 28 U.S.C.
 19 § 1446(b), all named Defendants consent to removal.

IV. VENUE

19. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and
1446(a) because the United States District Court for the Eastern District of
Washington embraces the place where this action is pending, namely, Spokane
County Superior Court.

V. NOTICE

20. Defendants will promptly serve this Notice of Removal on all parties and will promptly file a copy of this Notice of Removal with the clerk of the state court in which the action is pending, as required under 28 U.S.C. § 1446(d).

VI. CONCLUSION

Based on the foregoing, Defendants request that this action be removed to this Court. If any question arises as to the propriety of the removal of this action, Defendants respectfully request the opportunity to present a brief and oral argument in support of their position that this case is subject to removal.

DATED this 1st day of December, 2023.

MORGAN, LEWIS & BOCKIUS LLP

By: s/Per D. Jansen

Per D. Jansen, WSBA No. 49966

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DEFENDANTS' NOTICE OF REMOVAL
OF ACTION TO FEDERAL COURT - 10

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CERTIFICATE OF SERVICE

I, Lixi Aylin Stitt, declare that I am employed by the law firm of Morgan, Lewis & Bockius LLP, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On December 1, 2023, I caused a true and correct copy of the foregoing document to be served on counsel listed below in the manner indicated:

1. Defendants BMW of North America, LLC and BMW Financial Services NA, LLC's Notice of Removal to Federal Court
2. Defendants BMW of North America, LLC and BMW Financial Services NA, LLC's Verification of State Court Records
3. Defendants BMW of North America, LLC and BMW Financial Services NA, LLC's Corporate Disclosure Statement
4. Notice of Filing of Notice of Removal

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Via Legal Messengers
 Via First Class Mail
 Via Facsimile
 Via Electronic Mail
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7 *Attorney for Plaintiff Daniel Shirley*

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15 *Attorneys for Defendant BMW of Spokane*

16

s/ *Lixi Aylin Stitt*
17 Lixi Aylin Stitt

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20 DEFENDANTS' NOTICE OF REMOVAL
21 OF ACTION TO FEDERAL COURT - 12

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